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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
The Development of a National Framework to) RM 9474
Detect and Deter Backsliding to Ensure)
Continued Bell Operating Company Compliance)
with Section 271 of the Communications Act)
Once In-Region InterLATA Relief is Obtained)

**COMMENTS OF CTSI, INC.
IN SUPPORT OF PETITION FOR EXPEDITED RULEMAKING**

CTSI, Inc. ("CTSI"),¹ by its counsel, hereby submits its Comments in support of the above-captioned Petition for Expedited Rulemaking ("Petition") filed by Allegiance Telecom, Inc. ("Allegiance") on February 1, 1999.² CTSI agrees that the Commission issue a Notice of Proposed Rulemaking ("NOPR") as soon as possible to establish explicit and enforceable procedures for avoiding – or, if necessary, correcting – BOC non-compliance with the statutory conditions for Section 271 entry set forth in the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("Act"). As set forth in greater detail below, CTSI also generally agrees with Allegiance's request to establish national default minimum standards for most of the key aspects of BOC/CLEC interaction.

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¹ CTSI is a competitive carrier that provides local dialtone service in Pennsylvania and New York. CTSI is a wholly owned subsidiary of Commonwealth Telephone Enterprises, Inc., headquartered in Dallas, Pennsylvania.

² CTSI's Comments are submitted in response to the Commission's Public Notice, Report No. 2315 (February 5, 1999).

DISCUSSION

CTSI supports Allegiance's Petition, and favors the issuance of a NOPR by the FCC at the earliest possible opportunity. The national discussion eventuated by the issuance of the NOPR would have several salutary effects. First, it would focus attention on the many compliance problems that must be resolved prior to approving Section 271 entry, thereby creating a national dialogue that might help to improve the interrelationship of BOCs to CLECs. Second, it would help to provide a roadmap for BOC and CLEC alike to transition from the current situation to a scenario in which the BOCs are not only local providers, but also offerors of long distance services. Third, it would lend a modicum of certainty to the future that does not exist at present: the assurance that adequate tools and procedures exist "out front" to ensure that BOCs abide by the conditions for 271 entry even after they have obtained that exceedingly valuable prize.

A. The Act Invests The Commission With Authority For Enforcement of 271 Obligations

According to Section 271(d)(6) of the Act, the Commission is required to monitor the performance of BOCs after they gain Section 271 entry to ensure that they continue to comply with the statutory conditions for approval. If the Commission concludes that the BOC has "ceased to meet any of the conditions required for such approval," the Commission has three choices: (after notice and opportunity for a hearing) it can order the company to correct "the deficiency;" it can impose a penalty, or it can suspend or revoke the 271 approval. 47 C.F.R. Section 271(d)(6)(A). CTSI agrees with Allegiance that this statutory provision provides the Commission with ample authority to police the BOC, but it is not detailed enough. The Commission must promulgate appropriate rules to flesh out the needed procedures, and fashion appropriate remedies and penalties that can be applied.

B. The Commission Should Establish an Expedited Complaint Process Prior to BOC 271 Entry

Section 271(d)(6)(B) of the Act requires the Commission to establish “procedures for the review of complaints” against BOCs for failure to observe the conditions for 271 approval, and also requires that Commission action must have a short, 90-day turnaround time. Allegiance’s Petition provides a very convenient opportunity for the Commission to fulfill this statutory obligation. As noted above, addressing such issues now would have several beneficial effects; and, once 271 entry is approved, it will essentially be too late to fashion adequate rules to address problems “on the run.” These are complicated issues, and will require a lengthy and detailed national discussion to arrive at an appropriate conclusion.

C. The Commission Should Establish National Minimum Standards for the Most Crucial Aspects of BOC/CLEC Interactions

As part of this national discussion, the Commission should call upon all commenters to consider what the most crucial aspects of BOC/CLEC interactions are, in order to compile a list of minimum federal standards that must be observed by BOCs now and in the future. At a minimum, CTSI submits that there should be universally applicable standards for interconnection, collocation, order handling, economical, user-friendly and comprehensive electronic OSS, UNE provisioning, cutover intervals, recombination of UNEs and access to BOC rights of way. If a baseline is established that is friendly to competition, it will help to stem the rising tide of litigation, arbitration and complaints: both BOCs and CLECs will have a clear sense of their entitlements under federal law, and the individual interpretations of state commissions will not result in a patchwork of differing substantive results all over the country. This is not to say that the federal government should intrude too aggressively into the rights of the states, but merely that the FCC is in the best position to mandate overall guidelines that can stimulate competition in the industry as a whole.

In fact, absent the experience of CLECs and BOCs for the last few years after the effective date of the 1996 Act, it may not have been reasonably possible to set national standards: many unanticipated roadblocks have appeared in actual practice, and both subtle and not-so-subtle BOC tactics have resulted in delays and complications in getting competitive services to the customer. In addition, the uncertainty associated with the Eighth Circuit's invalidation of some of the FCC's rules, and their later reinstatement by the Supreme Court, viewed against progressive and inconsistent substantive interpretations of law among the states, has made it difficult until now to make the overall assessment necessary to attempt imposition of workable national minimum standards. CTSI submits that the time is ripe for the FCC to reassert its role in achieving the statutory goals by clarifying the specific minimum obligations that BOCs must meet. There will be no lack of helpful comments from CLECs and other participants in such a national discussion to aid the Commission in its task.

D. The Commission Must Fashion Comprehensive Remedies to Combat BOC Backsliding

Consistent with its statutory role as enforcer of the conditions of 271 entry, the Commission must consider carefully the types of remedies it will use to encourage compliance, or penalize non-compliance. Comments should be sought on this issue, but CTSI believes that the BOCs will have tremendous momentum and power once they are freed from many of the MFJ restrictions, and they will be difficult to deflect from anticompetitive courses. It will require not only Commission orders and monetary forfeitures, but operational penalties such as the ones urged by Allegiance. It is entirely possible that more than one type of penalty must be imposed at once in order to get BOC attention. An irrevocable period of significant pricing discounts to CLECs, suspension of new orders, and possible revocation of 271 authority are all possibilities. Without the certainty of painful and multifaceted penalties, BOCs may have the incentive to carry on with anticompetitive behavior while seeking to "vindicate their rights" in a

war of attrition with vastly less powerful and less capitalized competitors. This is a familiar behavior only possible for industry behemoths with a strong will and a long-term view, and it is difficult to regulate effectively. If, however, the Commission establishes very stringent, and escalating, penalties for non-compliance before 271 entry is effected, all participants will be on notice of the rules of the road, and it may have some deterrent effect.

In fashioning penalties, the Commission should take into account whether the BOC “deficiency” is recurrent or repetitive, and its duration and seriousness, and scale the magnitude of the response accordingly. If possible, there should be a tiered or scheduled approach similar to the one proposed by Allegiance in its Petition. CTSI does not favor the imposition of draconian penalties for very slight, singular or questionable infractions: there are going to be missteps on every carrier’s part – but evidence of a continuing pattern of BOC delay, obfuscation, and clever impediment of competitors should bring a swift and decisive response.

CONCLUSION

CTSI generally favors the proposals set forth by Allegiance in its Petition, and submits that this is an especially felicitous and timely opportunity for the Commission to take into account the history of BOC and CLEC interaction since the implementation of the 1996 Act, by establishing clear national guidelines, and processes to ensure competitive progress both before and after BOC 271 entry. The FCC has both the statutory authority and obligation to monitor and police the BOCs’ compliance with the Act’s competitive mandates, and it should propose workable rules for enforcement. A national colloquy on these subjects pursuant to a NOPR issued in response to the Allegiance Petition will be helpful to all concerned, because it will help to forge a roadmap for the future of competitive telecommunications.

Mark DeFalco
Director, Regulatory Affairs
CTSI, Inc
100 CTE Drive
Dallas, PA 18612
Telephone: (570) 675-5208
Facsimile: (570) 675-2525

Dated: March 8, 1999

Respectfully submitted,



Ronald J. Jarvis
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
3000 K Street, NW, Suite 300
Washington, D.C. 20007
Telephone: (202) 424-7500
Facsimile: (202) 424-7645

Counsel for CTSI, Inc.

CERTIFICATE OF SERVICE

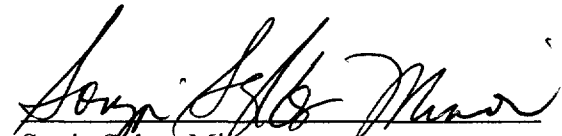
I hereby certify on this 8th day of March 1999, that copies of the foregoing COMMENTS OF CTSI, INC. IN SUPPORT OF PETITION FOR EXPEDITED RULEMAKING, were served via Messenger** or U.S. Mail, postage prepaid, upon the following parties:

Magalie Roman Salas, Esq. **(Original + 4)****
Secretary
Federal Communications Commission
Portals - 445 12th Street, S.W.
Filing Counter TWS-A325
Washington, D.C.

International Transcription Service**
1231 20th Street, N.W.
Washington, d.C. 20054

Robert W. McCausland
Vice President, Regulatory and
Interconnection
Allegiance Telecom, Inc.
1950 Stemmons Freeway, Suite 3026
Dallas, TX 75207-3118

Jonathan E. Canis
Ross A. Buntrock
Michael B. Hazzard
Kelley Drye & Warren LLP
1200 Nineteenth Street, N.W.
Fifth Floor
Washington, D.C. 20036


Sonja Sykes-Minor